#1

JUDGE COTE

13 CIV 2996

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RECEIVED
MAY - 3 2013
U.S.D.C. S.D.N.Y.
CASHIERS

RACHEL CROFT Plaintiff, v. GREENHOPE SERVICES for WOMEN, INC.; CATHERINE CREECH; and NORMA "DOE," Defendants.	Civ. Action No:

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Rachel Croft ("Plaintiff" or "Ms. Croft"), by and through her undersigned counsel, Giskan Solotaroff Anderson & Stewart LLP, as and for her Complaint in this action against Defendants Greenhope Services for Women ("Defendant Greenhope"), Catherine Creech ("Defendant Creech"), and Norma "Doe" ("Defendant Norma") (all together, "Defendants") hereby alleges as follows upon information and belief:

PRELIMINARY STATEMENT

1. On October 30, 2012, Defendants Creech and Norma – administrators at Defendant Greenhope, a residential drug treatment facility – falsely accused Ms. Croft of assault in retaliation for Ms. Croft's efforts to advocate for her health care needs. Ms. Croft was Redacted Redacted and six months pregnant at the time and had specialized medical and nutritional needs. Since Ms. Croft was also on parole at the time, Defendants Creech and Norma understood that their false accusations would send Ms. Croft to jail; under New York State law, individuals on parole charged with a crime are effectively presumed guilty until proven innocent. Ms. Croft would spend the next month at Rikers Island for a parole violation that she did not commit.

2. Accordingly, Ms. Croft brings this civil rights action to seek relief for Defendants' violation of her rights, privileges, and immunities secured by the First and Fourth Amendments of the United States Constitution and the laws of the State of New York.

JURISDICTION and VENUE

3. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343 because this action seeks redress for the violation of Plaintiff's constitutional and civil rights.

4. Plaintiff's claim for declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

5. Plaintiff invokes this Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over any and all state law claims that are so related to the claims within the original jurisdiction of this Court that they form part of the same case or controversy.

6. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to this action occurred in this District.

PARTIES

7. Plaintiff Rachel Croft is an adult resident of New York, New York.

8. Defendant Greenhope Services for Women, Inc., is a nonprofit New York corporation contracted by New York State to provide supervision and treatment services to individuals within the custody of the New York State Division of Parole ("Division of Parole"). Defendant Greenhope is located at 435 East 119th Street, New York, New York.

9. Defendant Catherine Creech was employed by Defendant Greenhope during the relevant period. Defendant Creech is sued in her individual capacity.

10. Defendant Norma "Doe," whose last name is currently unknown, was employed by Defendant Greenhope during the relevant period. Defendant Norma is also sued in her individual capacity.

11. At all times relevant herein, Defendants Creech and Norma acted under color of state law in the course and scope of their duties and functions as agents, employees, and/or officers of Defendant Greenhope in engaging in the conduct described herein because Defendant Greenhope was part of the enforcement machinery for the Division of Parole, acted pursuant to the coercive power of the Division of Parole, and carried out functions that were entwined with state policies.

12. At all times relevant herein, Defendants Creech and Norma violated clearly established constitutional standards under the First and Fourth Amendments of which a reasonable person would have known.

FACTS

13. Ms. Croft has been in the custody of the Division of Parole since May 2010.

14. In September 2012, Ms. Croft entered into residential drug treatment at Defendant Greenhope as a condition of her parole.

15. Upon information and belief, the Division of Parole contracts with Defendant Greenhope for the provision of drug treatment as an alternative to incarceration. According to its website, Defendant Greenhope "has developed formal relationships with the criminal justice system" to serve women on parole and those referred by the courts as an alternative to incarceration.

16. Ms. Croft was confined to Defendant Greenhope's residence and was not free to leave without the permission of Defendant Greenhope.

17. Ms. Croft was pregnant and suffered from several serious illnesses at the time, including Redacted As such, she followed a strict and highly specialized diet and medication regimen as prescribed and monitored by her longtime physician, Jacobo Abadi, M.D.

18. Defendant Greenhope staff, however, insisted that Ms. Croft forego that regimen in favor of one they preferred. Ms. Croft refused, which led to disagreements between she and the staff.

19. For instance, Ms. Croft requested that she be allowed to take her Redacted medications at 5:30 p.m. daily, as recommended by Dr. Abadi. It is important for the health of Redacted patients to medicate at the same time daily. This request upset Greenhope staff because the program only dispensed medication between 7:30 p.m. and 8:00 p.m. However, Ms. Croft advocated for her health care needs until Defendant Greenhope changed its policy. Greenhope staff began to treat Ms. Croft unfavorably as a result.

20. Ms. Croft also requested that she be allowed to continue to attend prenatal classes and receive prenatal care at Jacobi Medical Center – where she received prenatal care before entering Defendant Greenhope – because her severe medical issues rendered her pregnancy high risk. Defendant Greenhope staff, however, insisted that Ms. Croft transfer her prenatal care to Metropolitan Hospital Center. Defendant Greenhope staff repeatedly refused to allow her to leave the facility in order to keep her appointments at Jacobi Medical Center. Ms. Croft petitioned for a meeting with Greenhope's legal director, Estelle Pierce, and Vice President of Programs and Policy, Dr. Alethea Simon, to receive permission to continue her prenatal care at Jacobi Medical Center. Ms. Croft's decision to complain to Greenhope's upper-level managers about the situation further upset Greenhope staff.

21. The diet available to Ms. Croft at Defendant Greenhope was poor, which caused her to gain weight at a rate that was dangerous to her health and to the health of the fetus. Dr. Abadi prescribed a daily walk outside of the facility to ameliorate Ms. Croft's extraordinary weight gain. Defendants Creech and Norma twice refused to give her permission to leave the facility for her daily constitutional, which led to arguments between them and Ms. Croft when Ms. Croft insisted that she be allowed to follow Dr. Abadi's orders.

22. Dr. Abadi also recommended a specialized diet consisting of dairy, fruits, and vegetables. Defendant Greenhope, however, was indifferent to Ms. Croft's serious medical needs and failed to provide her with a therapeutic diet as recommended by Dr. Abadi. Defendant Greenhope's indifference led to further arguments between Ms. Croft and Defendants Creech and Norma when Ms. Croft advocated for her health needs.

23. These disagreements culminated on October 30, 2012, when Defendants Creech and Norma falsely accused Ms. Croft of assaulting Defendant Creech with a paper plate full of food.

24. Defendants Creech and Norma false accused Ms. Croft of assault in retaliation for advocating on her own behalf for appropriate medical care while at Defendant Greenhope.

25. Based upon the false accusations of Defendants Creech and Norma, Parole Officer Dexter Douthit arrested Ms. Croft on October 31, 2012, for violating the conditions of her parole. Parole Officer Douthit transferred Ms. Croft from Defendant Greenhope's residential facility to Lincoln Hospital, where he detained her for several hours until she could be transferred to Rikers Island. Ms. Croft remained handcuffed to her bed throughout her time at Lincoln Hospital.

26. While Ms. Croft was detained at Lincoln Hospital, Parole Officer Douthit returned to Defendant Greenhope to review video of the alleged assault. The video evidence demonstrated conclusively that Ms. Croft had not assaulted Defendant Creech as alleged, and that Defendants Creech and Norma had fabricated their claims.

27. Nevertheless, New York State Law establishes that once a parole warrant is issued and signed by a senior parole officer, it cannot be revoked until it is reviewed by a parole hearing officer. See N.Y. Exec. Law § 259.

28. Therefore, although he realized that Defendants Creech's and Norma's allegations against Ms. Croft were unfounded, Parole Officer Douthit was required to imprison Ms. Croft at Rikers Island pending parole revocation proceedings. Ms. Croft was six months pregnant at the time.

29. Defendants Creech's and Norma's false accusations of assault and subsequent imprisonment made Ms. Croft reluctant to advocate for her medical needs while at Rikers Island, for fear of further retaliation. As such, she submitted to a regimen of generic medications instead of the medications Dr. Abadi had prescribed. In consequence, during her incarceration, Ms. Croft was twice hospitalized at Elmhurst Hospital because of her severe reactions to the generic medications she received at Rikers Island.

30. Ms. Croft's final parole revocation hearing took place at the Rikers Island Judicial Center on November 20, 2012.

31. On the recommendation of Parole Officer Douthit, the Board of Parole released Ms. Croft from Rikers Island on November 26, 2012.

32. As a result of Defendants Creech's and Norma's retaliatory actions, Ms. Croft has suffered a violation of her constitutional rights, including but not limited to the loss of her liberty

and free speech rights. As a result of Defendants' illegal actions, Ms. Croft has also suffered physical pain and emotional trauma, including but not limited to fear, embarrassment, humiliation, emotional distress, anxiety, and loss of sleep.

AS AND FOR A FIRST CAUSE OF ACTION
(Claims Pursuant to 42 U.S.C. § 1983 Against Defendants Creech and Norma for Violation of the First Amendment)

33. Plaintiff realleges and incorporates by reference all of the preceding paragraphs.

34. Defendants Creech's and Norma's actions toward Ms. Croft were undertaken in retaliation for and were motivated and substantially caused by Ms. Croft's protected speech.

35. Defendants Creech's and Norma's actions toward Ms. Croft effectively chilled Ms. Croft's exercise of her First Amendment rights.

36. Defendants Creech and Norma acted under color of state law.

37. As a direct and proximate result of the actions hereinbefore described, Ms. Croft suffered the damages hereinbefore alleged.

38. Defendants Creech and Norma exhibited gross negligence and/or recklessness and/or callous indifference to Ms. Croft's federally protected rights, entitling Ms. Croft to an award of punitive damages.

AS AND FOR A SECOND CAUSE OF ACTION
(Claims Pursuant to 42 U.S.C. § 1983 Against Defendants Creech and Norma for Violation of the Fourth Amendment)

39. Plaintiff realleges and incorporates by reference all of the preceding paragraphs.

40. Defendants Creech and Norma instigated Ms. Croft's arrest and made Parole Officer Douthit an agent in accomplishing their intent to confine Ms. Croft.

41. Ms. Croft was conscious of her confinement.

42. Ms. Croft did not consent to her confinement.

43. Ms. Croft's confinement was not otherwise privileged, as Defendants Creech and Norma acted without probable cause to believe that Ms. Croft assaulted Defendant Creech.

44. Defendants Creech and Norma acted under color of state law.

45. Defendants Creech and Norma violated Ms. Croft's rights under the Fourth Amendment of the United States Constitution to be free from unreasonable seizures, including arrest without probable cause.

46. As a direct and proximate result of the actions hereinbefore described, Ms. Croft suffered the damages hereinbefore alleged.

47. Defendants Creech and Norma exhibited gross negligence and/or recklessness and/or callous indifference to Ms. Croft's federally protected rights, entitling Ms. Croft to an award of punitive damages.

AS AND FOR A THIRD CAUSE OF ACTION
(False Arrest/Imprisonment Under New York State Law Against All Defendants)

48. Plaintiff incorporates by reference the allegations set forth in all preceeding paragraphs as if fully set forth herein.

49. The conduct of Defendants Creech and Norma occurred in and during the course and scope of their duties and functions as Defendant Greenhope employees. As such, Defendant Greenhope is liable to Ms. Croft under the doctrine of *respondeat superior*.

50. Defendants instigated Ms. Croft's arrest and made Parole Officer Douthit an agent in accomplishing their intent to confine Ms. Croft.

51. Ms. Croft was conscious of her confinement.

52. Ms. Croft did not consent to her confinement.

53. Ms. Croft's confinement was not otherwise privileged, as Defendants acted without probable cause to believe that Ms. Croft assaulted Defendant Creech.

54. Defendants acted willfully, intentionally, and without any just cause or provocation.

55. Defendants' conduct was wanton, malicious, and/or cruel, entitling Ms. Croft to an award of punitive damages.

AS AND FOR A FOURTH CAUSE OF ACTION
(Negligence Under New York State Law Against All Defendants)

56. Plaintiff realleges and incorporates by reference all of the preceding paragraphs.

57. The conduct of Defendants Creech and Norma occurred in and during the course and scope of their duties and functions as Defendant Greenhope employees. As such, Defendant Greenhope is liable to Ms. Croft under the doctrine of *respondeat superior*.

58. Defendants had a duty to act with reasonable care toward Ms. Croft because under the same or similar circumstances a reasonable, prudent, and careful person should have anticipated that an injury to Plaintiff, or to those in a like situation, would probably result from their conduct.

59. Defendants' actions hereinbefore described constitute a gross breach of said duty and a gross deviation from accepted professional standards.

60. As a direct and proximate result of the actions hereinbefore described, Ms. Croft suffered the damages hereinbefore alleged.

61. Defendants' conduct amounted to utter recklessness, was so wantonly negligent as to be the equivalent of a conscious disregard for Plaintiff's rights, demonstrated a high degree of moral culpability, was designed to oppress and injure, evinced a conscious indifference to the effects of their acts, and was committed without regard to the rights of Plaintiff or of people in general, entitling Plaintiff to an award of punitive damages.

AS AND FOR A FIFTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress Under New York State Law Against All Defendants)

62. Plaintiff incorporates by reference the allegations set forth in all proceeding paragraphs as if fully set forth herein.

63. The conduct of Defendants Creech and Norma occurred in and during the course and scope of their duties and functions as Defendant Greenhope employees. As such, Defendant Greenhope is liable to Ms. Croft under the doctrine of *respondeat superior.*

64. Defendants Creech's and Norma's misconduct created an unreasonable and foreseeable risk of causing Ms. Croft emotional distress.

65. As a direct and proximate result of the negligence detailed above, Ms. Croft suffered the damages hereinbefore alleged.

66. Defendants' conduct amounted to utter recklessness, was so wantonly negligent as to be the equivalent of a conscious disregard for Plaintiff's rights, demonstrated a high degree of moral culpability, was designed to oppress and injure, evinced a conscious indifference to the effects of their acts, and was committed without regard to the rights of Plaintiff or of people in general, entitling Plaintiff to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court will:

67. Issue a judgment declaring that Defendants Creech and Norma violated Plaintiff's First Amendment rights under the United States Constitution;

68. Issue a judgment declaring that Defendants Creech and Norma violated Plaintiff's Fourth Amendment rights under the United States Constitution;

69. Award Plaintiff compensatory damages to be determined at trial, plus prejudgment interest;

70. Award Plaintiff punitive damages to be determined at trial, plus prejudgment interest;

71. Award Plaintiff reasonable attorneys' fees pursuant to 42 U.S.C. § 1988;

72. Award Plaintiff costs of suit pursuant to 42 U.S.C. §§ 1920 and 1988;

73. Award such other relief as this Court may deem appropriate and equitable, including injunctive and declaratory relief as may be required in the interests of justice.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: New York, NY
May 3, 2013

GISKAN SOLOTAROFF ANDERSON & STEWART LLP

BY:__________________________

Oren Giskan
Raymond Audain
11 Broadway, Suite 2150
New York, NY 10004
(646) 336-4904

Attorneys for Plaintiff Rachel Croft